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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1940.

No. **605**

JACKSON COUNTY, MISSOURI, PETITIONER,  
VS.  
CLARENCE B. REED, TRUSTEE, RESPONDENT.

TO THE HONORABLE CHARLES EVANS HUGHES, CHIEF JUSTICE  
OF THE UNITED STATES SUPREME COURT, AND THE  
ASSOCIATE JUSTICES OF THE UNITED  
STATES SUPREME COURT.

PETITION OF JACKSON COUNTY, MISSOURI, FOR  
WRIT OF CERTIORARI TO THE STATE  
OF MISSOURI.

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1880

April 1st - 1880

May 1st - 1880

June 1st - 1880

July 1st - 1880

Aug 1st - 1880

Sept 1st - 1880

Oct 1st - 1880

Nov 1st - 1880

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**PETITION OF JACKSON COUNTY, MISSOURI, FOR  
WRIT OF CERTIORARI TO THE STATE  
OF MISSOURI.**

Your petitioner, Jackson County, Missouri, respectfully shows:

## I.

**SUMMARY STATEMENT OF THE MATTER INVOLVED.**

This law action arose by respondent, Clarence B. Reed, as assignee, filing in the Circuit Court of Jackson County, Missouri, at Kansas City, on February 24, 1934, a petition in forty-nine counts, seeking to recover from defendant, Jackson County, for various named assignors, balances alleged to be due them from Jackson County, on account of having been named and performed the duties as deputy assessors in Jackson County, Missouri, in various classifications. The total amount prayed for was \$41,673.25 plus interest. The claim of each individual assignor was set up in a separate count in the one petition, and the various claimants constituted the persons whose claims make up the forty-nine counts.

The original petition in count one contained a claim for the plaintiff, Clarence B. Reed, for himself, and the other counts were for the assignors. Count one was dismissed and a subsequent suit filed on the part of plaintiff for himself in his own right and in a separate action. Answers were filed by Jackson County, and on December 11, 1936, an amended answer was filed on the part of Jackson County, to the suit as originally instituted on the forty-nine counts and also in answer to the new suit instituted on the part of Clarence B. Reed, as an individual, which suit was filed on December 12, 1936.

The plaintiff filed a reply to the amended answer on December 28, 1936. On February 24, 1937, a second amended answer was filed on the part of the defendant. Both causes, the original cause and the cause for the plaintiff, Clarence B. Reed, individually, were consolidated and assigned to Division No. 1 of the Jackson County Circuit Court, sitting at Kansas City.

On the 11th day of December, 1936, the Circuit Court heard the testimony of the various witnesses, and the

cause was continued from time to time until the case was finally submitted, and the Court took it under advisement.

On June 10th, 1937, the Court made a finding of facts and on the same day entered a decree in which it dismissed the plaintiff's petition as assignee, and also individually.

In due time, the plaintiff, individually, and as assignee, filed motions for new trial, and in due time, the same were overruled, and, in due time, the plaintiff, both individually and as assignee, did on November 16, 1937, present to the Circuit Court of Jackson County, his application and affidavit for appeal to the Supreme Court of the State of Missouri, which appeal and application was sustained and granted. The appeal was duly docketed and perfected by filing an abstract of the record and a brief in the Supreme Court of Missouri, and after argument and submission of briefs by both parties, the Supreme Court of Missouri, Division Number One thereof, at the September, 1939, Term, filed an opinion in which the Court reversed both causes, that of the individual, and that of the plaintiff as trustee, and remanded the same with directions to enter judgment for the plaintiff as asked. In due time, the defendant asked the court to grant a rehearing to it and the Court in due time overruled said application and thereafter the defendant filed a motion to transfer said cause from Division One to the Supreme Court *en banc*, and the said Division One on September 4th, 1940, overruled said motion to transfer said cause.

The opinion and ruling of the Supreme Court is therefore final and binding upon this defendant. The original petition on the part of the plaintiff, as trustee, is set out on pages 3 to 23, inclusive, of Abstract of Record, as filed in the Missouri Supreme Court.

On December 11, 1936, the court permitted the plaintiff to amend, by interlineation, Count II to Count L, inclusive, as appears on pages 3 to 23 of the Abstract of the Record as filed in the Missouri Supreme Court.

The court permitted the defendant to file a second amended answer which answer appears at pages 35 to 39 of the Abstract of the Record as filed in the Missouri Supreme Court.

After having heard the testimony and having taken the case under advisement, the court did, on the 10th day of June, 1937, make the following findings of facts:

#### "FINDINGS OF FACTS.

##### A.

"The court finds as a matter of fact that Clarence B. Reed is suing, as trustee of an express trust, on behalf of a large number of claimants having similar claims. That this suit is to recover back salary from January 1st, 1931, to June 1st, 1933. That immediately prior to January 1st, 1931, Frank R. English, then assessor of Jackson County, Missouri, after having been informed by the County Court that owing to the falling off in county revenues, the assessor's office would be compelled to reduce its expenditures; that Mr. English took the question of reducing expenses up with his deputies, whereupon it was agreed that in lieu of reducing the number of deputies, that the pay of each deputy would be reduced; that W. F. Cook, in pursuance to said arrangement, certified to the County Court, each month, the number of days worked by each deputy; that said deputies each month signed a payroll made from the aforesaid certificate from the assessor's office, and kept by the County Clerk; that all of said deputies, except John Steinhauser and John Love, were designated as 'D' deputies on said payroll, which payroll gave the number of days, the classification of deputy, the amount of money, and the signature of each deputy opposite his name, and the amount he would receive.

"That a large number of said deputies, excepting Steinhauser and Love, were originally appointed as 'C' deputies, and a large number of same were originally appointed as 'D' deputies.

"The court finds, as a matter of fact, that all of said deputies so designated as 'D' deputies, actually



worked more days per month than was certified to by the chief deputy in the assessor's office, and approved by the County Court.

"The court further finds that the act of the County Assessor in certifying deputies who had theretofore been appointed as 'C' deputies as 'D' deputies, under the aforesaid arrangement, and the said deputies signing the payroll designating them as 'D' deputies and receiving their compensation at the rate of \$6 per day as 'D' deputies, constituted a reappointment of said deputies as 'D' deputies, and a discharge of said deputies as 'C' deputies.

"The court further finds that Steinhauser and Love, in pursuance of the aforesaid arrangement, received and accepted salaries as 'C' deputies, when in fact they had been originally appointed as 'B' deputies" (R. 240 and 241, 242).

And the Court also gave Conclusions of Law, as follows:

#### CONCLUSIONS OF LAW.

##### A.

"The court finds as a matter of law that the 'C' deputies, by and through the arrangement to reduce the pay instead of reducing the number of deputies, and by received compensation at the rate of \$6 per day, and signing the payroll wherein they were designated as 'D' deputies, are now estopped from claiming any more or further compensation for services as deputy assessors.

"That Steinhauser and Love, by accepting and receiving compensation as 'C' deputies, and signing the payroll on which they were so designated, are estopped from recovering further compensation" (R. 242).

On the same date, June 10, 1937, the Court entered the following order dismissing the plaintiff's claim:

"Now on this day, this cause having been heretofore heard by the court, and the court being fully

advised in the premises, finds the issues herein in favor of the defendant."

The same order, of course, was given in both cases, that of Clarence B. Reed, individually, and as trustee.

Plaintiff contended that claimants were entitled to recover because they were public officers as defined by Section 9752, Revised Statutes of Missouri, 1929, which provides:

"And every assessor may appoint as many deputies as he may find necessary \* \* \* and who shall take the same oath and have the same power and authority as the assessor himself, while employed as such deputy, or deputies."

Plaintiff further contended that Section 11834, Revised Statutes of Missouri, 1929, provided for the classification of various deputies and the pay for each deputy in such classification, and the language of such statute is as follows:

"Such deputies and assistants" (including deputy county assessors) "shall be divided into classes as follows; and be paid in the same manner as the officers: Class 'A,' chief deputy; Class 'B,' special deputies; Class 'C,' deputies and assistant Clerks; Class 'D,' as deputies who may be employed in offices requiring an extra amount of work during part of the year. \* \* \* Class 'B' shall be paid \$2,100 per year; Class 'C,' \$1,800 per year; Class 'D,' \$6 per day for such time as they may be actually employed in the discharge of their duties."

It was defendant's contention then that plaintiff's original petition did not state a cause of action. Further, that the amended petition did not state a cause of action.

Plaintiff assumed, and Division One of the Supreme Court of Missouri, in its opinion, assumed that Section 11834, Revised Statutes of Missouri, 1929, obtained and were to be applied to the defendant, Jackson County, Mis-

souri. As a matter of fact, Section 11834, Revised Statutes of Missouri, 1929, is not applicable at all.

Section 11833, Revised Statutes of Missouri, 1929 (re-enacted in 1931, and 1933, with changes not here material, except that the population limit was raised to 750,000, Laws, 1931, page 323, Laws of 1933, page 373), fixed the salaries of county officers (including that of the assessor) in counties having a population of 150,000 and less than 500,000. Section 11834, Revised Statutes of Missouri, 1929, which authorizes these officers to employ deputies, classified the deputies and provided for their salaries, by its terms applied to the same counties to which Section 11833 applied.

We contend that Sections 11833 and 11834 *did not* apply to defendant Jackson County during the period from January 1, 1931, to May 31, 1933, the period in which plaintiff's claims are alleged to have accrued.

Plaintiff, in assuming, and the Supreme Court in effect assuming, that this section applied to Jackson County at the time in question, disregarded entirely Section 11808, Revised Statutes of Missouri, 1929, which was a statute of general application throughout the state during this period. It makes express provision for the method of ascertaining the population of a county. It does not resort to the United States Census report, but provides that the "highest number of votes cast at the last previous general election, \* \* \* shall be multiplied by five, and the result shall be considered and held for the purpose aforesaid as the true population of such county," for the "purposes of determining the population of any county in this state, as a basis for ascertaining the salary of any county officer \* \* \* or the amount he shall be allowed to pay for deputies or assistants, \* \* \*"

By Section 13808, Revised Statutes of Missouri, 1929, the Blue Book issued by the Secretary of State is authorized and declared to be the Official Manual of the State

of Missouri. A reference to that manual shows by that method, the smallest population of Jackson County during the period involved was 798,400 (Official Manual for the years 1931-32, page 234, General Election held November 4, 1930, for Superintendent of Schools, 159,680 and multiplied by 5 as per Section 11808 makes a total of 798,400. In Official Manual for the years 1933-34, page 215, General Election held November 8, 1932, Jackson County vote for Governor, page 215, was 257,328, and multiplied by 5 as per Section 11808 was 1,286,640).

Thus, the very section relied upon by plaintiffs (Sec 11834) and by the opinion of the Supreme Court, for the classification did not, in fact, apply to Jackson County.

Since there is no statutory enactment giving a deputy a right to a specific salary, and since he has accepted one which was habitually paid, for two and one-half years, he has received all he is legally entitled to receive, and plaintiff's petition does not state a cause of action, nor does the amended petition state a cause of action.

Having stated no cause of action, then the defendant was entitled to have the Supreme Court of Missouri affirm the trial court in dismissing plaintiff's petition. The Missouri Supreme Court having failed to do so, denied the defendants the right as guaranteed by the Fourteenth Amendment, Section 1, of the Constitution of the United States, which provides:

"\* \* \* Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Further, the Supreme Court, by its opinion, violated the Fifth Amendment to the Constitution of the United States which provides:

"\* \* \* nor be deprived of life, liberty, or property, without due process of law; \* \* \*"

in that the opinion of the Supreme Court held that the plaintiff was entitled to the benefits of a statute fixing the salary of deputy assessors, as set out in Section 11834, when, in fact, it did not apply to the defendant County by reason of the correct method of population ascertainment showing defendant County had a greater population than that provided for in Section 11834 (Which section was relied upon by Plaintiff, and by Missouri Supreme Court. The section however only applied to counties having 150,000 to 500,000 population).

### **GROUND S RELIED ON FOR THE ALLOWANCE OF THE WRIT.**

#### **I.**

Because the Supreme Court of Missouri, in reversing the decision of the trial court and directing a judgment in favor of the plaintiff, in holding that Section 11834, Revised Statutes of Missouri, 1929, was applicable to Jackson County, ignored and did violence to Section 11808, Revised Statutes of Missouri, 1929, which provided the population should be ascertained by the multiplication of the highest number of votes by five. That if this method is followed, the provisions of Section 11834 would not apply to Jackson County because the population classification would not fit Jackson County.

Thus, the Supreme Court by its holding Section 11834 applied to Jackson County violated the rights of defendant as guaranteed by the Fourteenth Amendment, Section 1, of the Constitution of the United States, which provides:

“\* \* \* Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

Further, the Supreme Court of Missouri, by its opinion, violated the Fifth Amendment to the Constitution of the United States, which provides:

“\* \* \* nor be deprived of life, liberty, or property, without due process of law; \* \* \*”

in that the opinion of the court held that the plaintiff had stated a good cause of action, and in holding that the plaintiff was entitled to the benefits of a statute fixing the salary of deputy assessors, when, in fact, it did not apply to the defendant County.

### **GROUND'S UPON WHICH JURISDICTION OF THIS COURT IS INVOKED.**

#### **I.**

##### **(a) Statutory Provisions, and Constitutional Provisions Believed to Sustain the Jurisdiction.**

The jurisdiction of this court is invoked under the provisions of Title 28, United States Code Annotated, Section 350, page 376; and under the provisions of the Fourteenth Amendment, Section 1, of the Constitution of the United States, and under the provisions of the Fifth Amendment to the Constitution of the United States.

##### **(b) The Date of the Judgment to Be Reviewed.**

The judgment of the Missouri Supreme Court in refusing to transfer the cause to the Court *en banc* was made on the 4th day of September, 1940. The motion for rehearing being overruled on the 7th day of May, 1940, and the opinion of the Supreme Court of Missouri, having been rendered on the \_\_\_\_\_ day of March, 1940. The judgment of the Supreme Court became final on September 4th, 1940. This petition for certiorari, and supporting transcripts are filed in this court within three months from the 4th day of September, 1940.

**(c) Nature of the Case and Rulings of the Supreme Court of Missouri Relied Upon As a Basis of This Court's Jurisdiction.**

The nature of the case and the rulings of the Supreme Court of Missouri, as a basis for this court's jurisdiction, is stated in the petition for certiorari and it would seem to be repetition to restate the same.

**(d) Authority Believed to Sustain the Jurisdiction of This Court.**

The revised rules of this court, adopted February 13, 1939, effective 27, 1939, with appendix thereto, of Federal statutes, sustain the jurisdiction of this court. Rule 38 pertaining to writ of certiorari discloses the reasons which the court will consider as authority for issuance of the writ. We believe the grounds assigned for the writ of certiorari are clearly within the reasons indicated by this court, and that the grounds asserted for the writ show on the face that this court has jurisdiction and should grant the prayed writ of certiorari.

The Fourteenth and Fifth Amendments to the Constitution of the United States guarantee "due process of law," and to permit a recovery by one who has not shown himself to be entitled to the benefits of a statute is a violation of these sections. Further, it is a violation of the two amendments to hold a section will be applicable when it is shown the population classification of the defendant does not meet the classification of the claimed applicable statutes.

**II.**

**STATEMENT OF THE CASE.**

The petitioner has stated the case in the summary statement of matter involved in the petition for a writ of certiorari, which is adopted and made a part of this brief.

## III.

**SPECIFICATIONS OF ERROR INTENDED TO BE  
URGED.**

1. The Missouri Supreme Court erred in reversing the trial court because:

(a) The petition did not contain a statement of a good cause of action, in that no statutory law was shown to have given the plaintiffs a right to any specified sum for their services except Section 11834, Revised Statutes of Missouri, 1929, and that section did not apply to Jackson County, the defendant.

(b) The Court erred in holding that a cause of action had been proven by applying the provisions of Section 11834, Revised Statutes of Missouri, 1929, to Jackson County, when the section only applied to counties having a population of 150,000 to 500,000, when under the provisions of Section 11808, the population of Jackson County (defendant) was ascertained by multiplying the vote by five, which would place defendant in a different classification than that of Section 11834.

(c) The Supreme Court erred in not giving effect to the provisions of the Fifth and the Fourteenth Amendments of the Constitution of the United States, and holding the plaintiff could not recover because he had not shown that some statutory law, which applied to the defendant, gave the claimed right to the specified salary.



### ARGUMENT.

#### **I. The Supreme Court Had No Power to Award the Plaintiff a Judgment and Reverse the Trial Court's Dismissal of Plaintiff's Claim, Except That the Plaintiff Show Some Statutory Law Giving the Right to the Claimed Salary.**

It was plaintiff's claim that by reason of the provisions of statutory law giving the deputy county assessors a greater salary than that actually received, they were entitled to the difference. This was the theory of the petition, and the theory of the Missouri Supreme Court. It, therefore, becomes necessary to find what statute it is that plaintiff relies upon.

The petition itself does not set out any statute by reference, or otherwise. The plaintiff merely alleges that defendant county is a "subdivision of the State of Missouri, containing more than 150,000 inhabitants and less than 500,000 inhabitants \* \* \*" (R. 4 of Abstract of Supreme Court of Missouri).

The plaintiff did not make any proof on the subject of population, but assumed that the Court would take judicial notice of the population of the defendant County. In this the plaintiff was right, for it has been held that such matters are by the courts judicially noticed. Such was the holding in *Perkins v. Burks*, 336 Mo. 248, 78 S. W. 2d 845, 1. c. 253-254:

"However, here, there was no disputed fact question; both the census and the total vote at the 1928 presidential election which determined Perkins' salary under the respective contentions of the parties *were facts already determined by public officers of which a court would even take judicial notice* (*Cartwright v. McDonald County*, 319 Mo. 848, 5 S. W. 2d 54)" (Italics ours).

Again, in the case of *Cartwright v. McDonald County*, 319 Mo. 848, 5 S. W. 2d 54, which was relied upon in the Perkins case, says, at l. c. 852:

"If this is so, the respondent was entitled, under the terms of the statute, only to such salary as pertained to the office on November 2, 1920, and that, *we may judicially notice from 1916 official election returns and the provisions of Sections 11352 and 11354, Revised Statutes, 1919*, was the \$1,350 salary he has already received" (Italics ours).

The opinion of the Supreme Court followed the brief of plaintiff in presuming that Section 11834, Revised Statutes of Missouri, 1929, applied to the defendant county.

As a matter of fact, during the period in question, 1931-2-3, that section is not applicable because by the statutory measures of ascertainment of population, defendant county does not fall within its provisions.

Section 11834 is applicable to such counties as have a population of not less than 150,000 and not more than 500,000. It will be noted that plaintiff's petition specifically alleges Jackson County has between 150,000 and 500,000 population (R. 4 of Record in Missouri Supreme Court). However, Section 11808, Revised Statutes of Missouri, 1929, which is a statute of general application to all counties throughout the state, in effect at that time, expressly provides for the method of population classification. It reads as follows:

"Sec. 11808. Salaries of county officers—population, how determined.—For the purpose of determining the population of any county in this state, as a basis for ascertaining the salary of any county officer for any year, or the amount of fees he may retain, or the amount he shall be allowed to pay for deputies or assistants, the highest number of votes cast at the last previous general election, whether heretofore or hereafter held in such county, for any office, shall be multiplied by five, and the result shall be considered and held for the purpose aforesaid as the true population of such county" (Italics ours).

By Section 13808, Revised Statutes of Missouri, 1929, the Blue Book, issued by the Secretary of State is authorized and is declared to be the official manual of the State of Missouri. A reference to the official manuals which set out the vote for state officers at the general election held in 1928-1930, shows that, by use of the methods commanded in Section 11808, the smallest population in Jackson County during the period involved in this suit was 798,400 and in 1932 it was as high as 1,286,640. The following tabulations which are taken from the official Manual show the results as follows when the vote is multiplied by five:

Official Manual (1929-30), at page 239, shows in general election held November 6, 1928, Jackson County vote for Secretary of State was a total of 224,074, which, multiplied by 5, gives a total population in accordance with Section 11808, of 1,120,370.

Official Manual (1931-32), Page 234, for the general election held November 4, 1930, for the office of County Superintendent of Schools, shows a total vote cast for that office of 159,680. This, multiplied by 5 as per Section 11808, gives a total population of 798,400.

Official Manual (1933-34) page 215, for the general election held November 8, 1932, for the office of Governor shows a total vote cast in Jackson County, of 257,328, and when multiplied by 5 as per Section 11808, gives a total population of 1,286,640.

Thus, since the court takes judicial notice of the population of counties, it was demonstrated that Jackson County did not fall into the classification as provided for in Section 11834, as contended by plaintiff.

We, therefore, again submit that the petition of plaintiff fails to state any cause of action, and the proof fails to prove any cause of action which would justify a court in giving to the plaintiff a salary by reason of a statute that did not apply to the county in question.

**Conclusion.**

We, therefore, seek a writ from this Court, of certiorari, to review the opinion of the Missouri State Supreme Court in which it reversed the trial court judgment and ordered that the defendant pay the plaintiff under a statute that is clearly and plainly not applicable to the defendant county in question. We can hardly conceive of any plainer case where the Constitutional rights, as provided for in the Fifth and Fourteenth Amendments on due process of law, have been more flagrantly disregarded and violated. We humbly ask that this court grant a writ to the State Supreme Court and have the error there made by it rectified.

Respectfully submitted,

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